

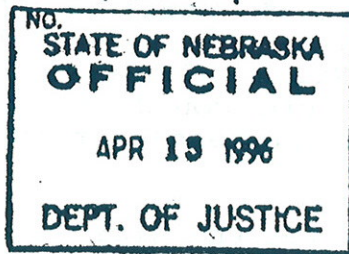


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DEPUTY ATTORNEYS GENERAL

DATE: April 11, 1996

SUBJECT: Access to records of travel and per diem reimbursement expenses of State Senators

REQUESTED BY: John Breslow  
Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General  
Steve Grasz, Deputy Attorney General

It is our understanding that a State Senator has objected to your request to review certain expense information in conjunction with your audit of travel and per diem reimbursements. You have inquired as to the availability of these records to you under Nebraska law for use in conducting your audit.

As you are aware, a policy was set up by former Attorney General Spire with regard to review of legislative expenses by Dana F. Cole & Company. This policy, however, was instituted to create a system of reimbursement that would survive constitutional challenge (This office did successfully defend the reimbursement policy in *Jaksha v. Thomas*, 234 Neb. 794, 502 N.W.2d 826 (1993)). The Spire policy, however, did not address the separate issue of the authority of the State Auditor. In this regard, we note the most recent report of Dana F. Cole & Company (March 29, 1996) specifically states that the review performed is "solely to assist the [Executive] Board in verifying that Legislators have been reimbursed in conformity with the Sessional Expense Reimbursement Policy . . . the procedures applied do not constitute an examination in accordance with standards established by the American Institute of Certified Public Accounts [sic]. . . ."

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This office has previously determined that the State Auditor has the constitutional authority to audit all claims payable out of state funds. See, e.g., Op. Att'y Gen. No. 93012 (March 4, 1993). This position was upheld in *Breslow v. Primeau*, Docket 496, Page 039 (Lancaster County District Court, April 14, 1994), in which the court adopted the statement of the law set forth in *Giss v. Jordan*, 309 P.2d 779 (Ariz. 1957). In *Giss v. Jordan*, the Supreme Court of Arizona held that the Legislature could not prevent the State Auditor from auditing expense reimbursement records for members of the Legislature.

The District Court stated that the *Giss* decision "is directly applicable to any attempt by the Nebraska Legislature to prevent the State Auditor from auditing legislative records, expense accounts or other claims paid from the state treasury." The District Court also specifically held, "It was undoubtedly intended by the framers of our Constitution that in the matter of auditing the accounts of all public officials and state agencies, that this function was to be performed by an officer independent of the officers and agencies to be audited."


Consequently, it remains our opinion that the State Auditor is entitled to examine all expense records pertaining to claims payable from state funds, including all records of travel and per diem reimbursements. In other words, the Auditor may see receipts or expense records for amounts claimed by State Senators. Conversely, if a Senator has expenses that exceed the amount for which reimbursement is sought, the Auditor may not view those records since they are personal rather than state expenses.

Sincerely yours,

DON STENBERG  
Attorney General

  
Steve Grasz  
Deputy Attorney General

Approved By:

  
Attorney General